

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.04.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

and

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

CRIMINAL APPEAL NO.204 OF 2017

Ramesh @ Ramesh Kumar

... Appellant/Accused

vs

State represented by
the Inspector of Police,
B - 6, Peelamedu Police Station,
Coimbatore.

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Criminal Procedure Code to set aside the judgment of conviction and sentence against the accused/ appellant in S.C.No. 87 of 2014, dated 16.02.2016 on the file of First Additional District and Sessions Judge at Coimbatore.

For Appellant : Mr.R.Rajasekaran

For Respondent: Mr.P.Govindarajan
Additional Public Prosecutor

J U D G M E N T

(Order of the Court was delivered by Dr.Anita Sumanth, J.)

This Criminal Appeal has been filed challenging the judgment of the First Additional District and Sessions Judge at Coimbatore in S.C.No.87 of 2014 confirming the charges laid out against the accused and convicting him for offence under section 302 IPC and sentencing him to imprisonment for life with levy of fine of Rs.1,000/-, in default of which, to undergo simple imprisonment for three months.

2. The case of the prosecution was to the effect that Ramesh @ RameshKumar (A1) had, along with Kani @ Marikkani had committed murder of Raja @ Yogaraja on 2.2.2013 at 10.30 p.m. The learned Trial Judge had, after hearing both parties confirmed the charges and imposed sentence as set out above.

3. We have heard Mr. R.Rajasekaran, learned counsel appearing for the appellant and Mr.P. Govindarajan, learned Addl. Public Prosecutor appearing for the respondent.

4. At the outset, both learned counsel would point out that Kani @ Marikkani, second accused in SC.No.87 of 2017 had filed an appeal in CrI.A.No.59 of 2017, that has been heard by us and allowed vide order dated 27.02.2017.

5. Upon perusal of the appeal and supporting documents, we find that the trial Judge has accepted the case of the prosecution based substantially on the deposition of PW9 Anguraj, who had stated that he had seen A1 and A2 last on 2.2.2013 with the murder weapons. The motive for the murder was stated to be enmity that developed between the two accused and the deceased, following a complaint made by the deceased to PW1, their employer, based on which, the two accused had been dismissed from service. Confessions had also been recorded from both accused by the Investigating Officer-C.Karthikeyan-PW-24. The facts and circumstances in relation to the case is of A1 and A2 are identical. After appreciation of the arguments of the counsel as well as the evidence and the records, this Court has come to the conclusion that A2 (Marikkani) was innocent and liable to be acquitted of all charges in the following terms;

21. There are no eyewitnesses to establish the commission of crime by the accused. What is clear and has been established by the prosecution is that Yogaraj has been murdered leading to the commission of a homicide. What remains to be established is who has committed the crime. The case of the prosecution, as accepted by the trial judge, is that the accused was responsible for committing the crime. Strong reliance is placed on the deposition of Anguraj, PW9, who is a hearsay witness. He would state that he saw the accused last on 02.02.2013 at 10.30 p.m. with a hoe and iron pipe. However, the statement of PW9 is silent as to the events that transpired between 02.02.2013 and 04.02.2013, leaving a yawning gap of more than one day that remains unexplained. This creates a doubt as to the veracity of the statement. The theory put forth by the witness and accepted by the prosecution is just that, a mere theory that has not been substantiated by any evidence connecting the accused with the crime connected. We are thus not convinced that the evidence of PW9 is credible and reliable enough to be the basis of conviction of the accused. The evidence and reliance placed on the same stands rejected.

22. The only other point is the confessions

recorded from the accused by the investigating officer, which, in terms of the mandate of Section 25 of the Indian Evidence Act, is liable to be ignored and accorded no weight. The witness to such confession was PW10 Mahesh Kumar, the nephew of the PW1, the de-facto complainant. Seen in totality, the confessions do not appear to be credible or believable and do not, in any event, inspire the confidence of the Court. The evidence of PW1 is also unconvincing and too simplistic to be believed. The motive for the crime, according to him, is the enmity caused between the accused and deceased by the dismissal from service. This cannot lead to the automatic conclusion of murder and can at best cause suspicion in the mind of the prosecution that has to be corroborated with other evidence so as to be beyond doubt.

23. In a case that is based entirely on circumstantial evidence, it becomes all the more incumbent on the prosecution to draw the golden thread connecting all facts and events clearly so as to establish the sequence of events in an unbroken chain. In the present case, the chain of events is marred more than once by virtue of the flaw in the last seen theory put forth by PW9 and the unsubstantiated and illegal confession recorded by the police officials.

24. Further, no weight can be attributed to the chance finger print of A1 found by the finger print expert. We do not believe any adverse inference can be drawn from this isolated fact since the accused and the deceased were, after all and admittedly, staying together in the room where the finger print was found.

25. In the light of the detailed discussion above, we are inclined to interfere with, and reverse the order of the Trial judge. The appeal is allowed and the conviction and sentence imposed on the appellant are set aside.

6. In view of the identical nature of the case, in relation to both A1 and A2, we are of the view that the appellant in this appeal is also liable to be acquitted of all charges following our decision in CrI.A.No.59 of 2017.

7. In the result, this Criminal Appeal is allowed, the judgment of the trial court reversed and appellant acquitted of all charges.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr

To

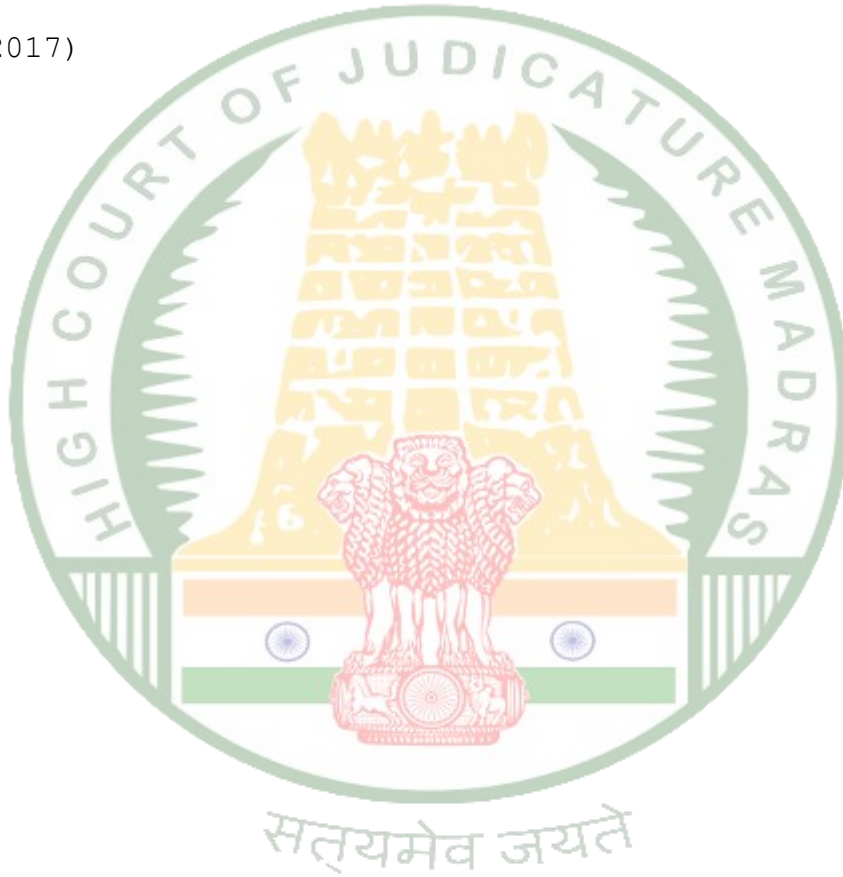
1. The I Addl. District & Sessions Judge,
Coimbatore.
2. The Superintendent,
Central Prison,
Puzhal, Chennai.
3. The Inspector of Police,
B - 6, Peelamedu Police Station,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.
5. The District Collector,
Coimbatore.
6. The Director General of Police,
Mylapore, Chennai-4.
7. The judicial Magistrate VI,
Coimbatore.
- 7(a).-do- Thro The Chief Judicial Magistrate,
Coimbatore.
8. The Principal District & Sessions judge,
Coimbatore.

9. The Superintendent of Police,
Coimbatore.

10. The Section Officer,
Criminal Section,
High Court, Madras.

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SKS (CO)
RS (21/06/2017)



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